



[6735-01]

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2700

Procedural Rules to Permit Parties to File and Serve Documents Electronically

AGENCY: Federal Mine Safety and Health Review Commission

ACTION: Final rule.

SUMMARY: The Federal Mine Safety and Health Review Commission (“the Commission”) published interim rules on December 23, 2013, that permitted parties to file and serve documents electronically with the Commission, and permitted comments on the rules. The Commission is adopting those interim rules as final rules without making further changes.

DATES: *Effective date:* This final rule is effective [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. *Comments due date:* The Commission will accept written and electronic comments received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Written comments should be mailed to Michael A. McCord, General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, 1331 Pennsylvania Ave., NW, Suite 520N, Washington, DC 20004-1710. Electronic comments should state “Comments on Electronic Filing and Service Rules” in the subject line and be sent to RulesComments@fmshrc.gov.

FOR FURTHER INFORMATION CONTACT: Sarah Stewart, Deputy General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review

Commission, at (202) 434-9935.

SUPPLEMENTARY INFORMATION:

A. Background

In 2013, the Commission published interim rules that permitted parties to file and serve documents electronically. 78 FR 77354 (Dec. 23, 2013). The Commission stated that in 2014, it would begin using a new electronic case management system (“e-CMS”) in order to more efficiently manage its caseload. The Commission explained that although parties may file documents electronically through the system, parties may also continue to file documents non-electronically as they have in the past. The Commission published changes to its procedural rules as interim rules in order to explicitly permit electronic filing and service. The Commission subsequently published a correction to one of the interim rules (79 FR 3104 (Jan. 17, 2014)), and extended the comment period through July 31, 2014 (79 FR 20098 (Apr. 11, 2014)).

The Commission received three comments on the interim rules. Of those, the Commission received two comments from the Secretary of Labor through the U.S. Department of Labor’s Office of the Solicitor. First, the Secretary noted that interim rule 29 CFR 2700.5(f)(1) provides that when filing is by electronic transmission, filing is effective upon “successful receipt by the Commission,” and requested clarification about what constitutes successful receipt by the Commission. Second, the Secretary commented that, as a practical matter, some documents may not be deliverable on the same day that a document is filed electronically, as required by interim rule 29 CFR 2700.7(c)(1).

During the past five years, the Commission has handled on a case-by-case basis any questions regarding what constitutes successful receipt in terms of electronic filing and the inability to effect service on the same day that a document was filed electronically. Given the infrequency with which such circumstances arise, the Commission has determined that it is appropriate to continue its current practice without making changes to the interim rules. However, the Commission has placed an example illustrating successful receipt in the electronic filing instructions on its website (www.fmshrc.gov).

The third comment that the Commission received noted that there is no Commission procedural rule that specifically requires that all pleadings be signed, although interim rule 29 CFR 2700.6 sets forth the manner in which pleadings should be signed and by whom. The commenter further questioned whom should sign a pleading in a discrimination proceeding brought by the Secretary on behalf of a miner pursuant to 30 U.S.C. 815(c)(2).

The Commission has determined that such comments do not pertain to the electronic filing and service changes addressed by the interim rules. Accordingly, the Commission has determined that it need not change the interim rules to address this comment. However, the Commission is currently drafting a notice of proposed rulemaking regarding changes to its procedural rules that are not restricted to electronic filing and service. The Commission is considering the third comment in the context of that proposed rulemaking.

B. Notice and Public Procedure

1. Executive Orders:

The Commission is an independent regulatory agency under section 3(b) of Executive Order (“E.O.”) 12866 (Sept. 30, 1993), 58 FR 51735 (Oct. 4, 1993); E.O. 13563 (Jan. 18, 2011), 76 FR 3821 (Jan. 21, 2011); E.O. 13771 (Jan. 30, 2017), 82 FR 9339 (Feb. 3, 2017); E.O. 13777 (Feb. 24, 2017), 82 FR 12285 (Mar. 1, 2017); and E.O. 13132 (Aug. 4, 1999), 64 FR 43255 (Aug. 10, 1999).

The Commission has determined that this rulemaking does not have “takings implications” under E.O. 12630 (Mar. 15, 1988), 53 FR 8859 (Mar. 18, 1988).

The Commission has determined that these regulations meet all applicable standards set forth in E.O. 12988 (Feb. 5, 1996), 61 FR 4729 (Feb. 7, 1996).

2. Statutory Requirements:

Although notice-and-comment rulemaking requirements under the Administrative Procedure Act (“APA”) do not apply to rules of agency procedure (5 U.S.C. 553(b)(3)(A)), the Commission invites members of the interested public to submit comments on this final rule. The Commission will accept public comment until [Insert date 30 days after date of publication in the FEDERAL REGISTER].

The Commission has determined that this rulemaking is exempt from the requirements of the Regulatory Flexibility Act (“RFA”) (5 U.S.C. 601 et seq.), because the proposed rule would not have a significant economic impact on a substantial number of small entities.

The Commission has determined that this rule is not a “major rule” under the Small Business Regulatory Enforcement Fairness Act (“SBREFA”) (5 U.S.C. 804(2)).

The Commission has determined that the Paperwork Reduction Act (“PRA”) (44 U.S.C. 3501 et seq.) does not apply because these rules do not contain any information collection requirements that require the approval of the OMB.

The Commission has determined that the Congressional Review Act (“CRA”) (5 U.S.C. 801 et seq.) does not apply because, pursuant to 5 U.S.C. 804(3)(C), these rules are rules of agency procedure or practice that do not substantially affect the rights or obligations of non-agency parties.

The Commission has determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment requiring an environmental assessment under the National Environmental Policy Act (“NEPA”) (42 U.S.C. 4321 et seq.).

The Commission is an independent regulatory agency, and as such, is not subject to the requirements of the Unfunded Mandates Reform Act (“UMRA”) (2 U.S.C. 1532 et seq.).

List of Subjects in

29 CFR Part 2700

Administrative practice and procedure, Mine safety and health, Penalties, Whistleblowing.

PART 2700 – PROCEDURAL RULES

Accordingly, the interim rule amending 29 CFR part 2700, which was published at 78 FR 77354 on December 23, 2013, and corrected at 79 FR 3104 on January 17, 2014, is adopted as final without change.

Dated: November 1, 2019

Marco M. Rajkovich, Jr.

Chairman, Federal Mine Safety and Health Review Commission

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